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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,491	08/18/2003	Erik Hjerpe	31577-190971	1824

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EXAMINER
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DUNN, DAVID R

ART UNIT	PAPER NUMBER
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3616

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/642,491

Applicant(s)

HJERPE, ERIK

Examiner

David Dunn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 09/959,989.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/18/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The preliminary amendment filed 8/18/03 is acknowledged. Claims 1-17 have been canceled and claims 18-33 are pending.

#### ***Information Disclosure Statement***

1. The information disclosure statement filed 8/18/03 is acknowledged. See enclosed IDS form.

#### ***Specification***

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

#### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 18-33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A claim directed to or including within its scope a human being will not be considered to be patentable subject matter under 35 U.S.C. 101 since the grant of a limited, but exclusive property right in a human being is prohibited by the Constitution. See also Commissioner Quigg's notice at 1077 OG 24 (April 21, 1987).

Claim 18 positively recites the occupant of the vehicle, and more specifically, "at least one foot". The claim is dependent upon the occupant. Also note claims 19, 20, etc. which are even more specifically dependent upon the occupant. The examiner recommends amending the claims such that they are not dependent upon an occupant and do not positively recite the occupant or using such language as "adapted to be beneath at least one foot . . ."

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 18-26, 32, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by White (4,991,900).

White discloses a load distribution element to be mounted in a vehicle beneath at least one foot of an occupant, the element comprising a plate (12; see Figure 1), the plate having a first region of a predetermined strength (lower step 14) and at least one further region of a greater strength (larger steps 14), the region of greater strength comprising a first area to be located beneath a part of the foot (see Figure 2, i.e., right side). The part of the foot is the heel (as seen in Figure 2). The first area is dimensioned to be located beneath the heels of two feet (note sufficient width for two heels). The further region incorporates a second area (left side) which extends adjacent one edge. The element is substantially rectangular and the further region incorporates one area (second area- left side) which extends across the element which is spaced

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from the first area. The element includes a weak area (upper or lower ends of 10; i.e., see portion left of steps 14 in Figure 3).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Kowalski (6,158,766).

White is discussed above and fails to show padding.

Kowalski shows a vehicle floor with a padding (22) between the carpet and the floor (16). Kowalski also shows an airbag (24). The air bag is damp proof (see column 2, lines 15-20). The airbag has a general hinge line to connect the upper surface.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify White with the teachings of Kowalski to include a padding between the element and the vehicle floor in order to provide a softer and more comfortable feel to the general floor area. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify White with the teachings of Kowalski to include an airbag between the element and the vehicle floor in order to better protect the occupant.

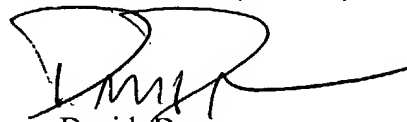
*Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stuertz et al. shows an energy absorbing foot rest. Bell shows a foot rest of interest. Stata shows a floor mat of interest. Murrell shows a foot rest.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Dunn whose telephone number is 703-305-0049. The examiner can normally be reached on Mon-Thur, alt. Fridays, 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 703-308-2089. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Dunn  
Primary Examiner  
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